

file Drum

Z. LANCE SAMAY
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
ONE WASHINGTON STREET
POST OFFICE BOX 130
MORRISTOWN, NEW JERSEY 07963-0130

OF COUNSEL:
WOLF SAMAY, ESQ.
ELIZABETH A. KENNY, ESQ.

TELEPHONE: 201-540-1133
TELECOPIER: 201-540-1020

September 20, 1997

Lowell P. Braxton, Acting Director
Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
Post Office Box 145801
Salt Lake City, UT 84114

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PROFESSIONAL CORPORATION
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Z. LANCE SAMAY, ESQ.
Post Office Box 130
Morristown, New Jersey 07963-0130



PLEASE ARRANGE TO MARK THIS COPY OF ENCLOSED
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THANK YOU.

Done 9-23-97

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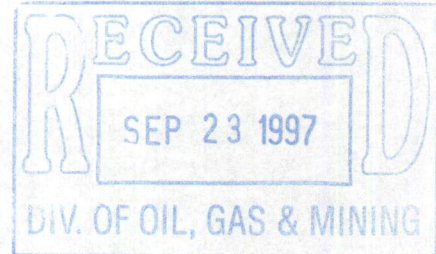
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Lowell P. Braxton, Acting Director
Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
Post Office Box 145801
Salt Lake City, UT 84114
Telephone No.: 1-801-538-5370



Re: NOTICE OF AGENCY ACTION TO ENFORCE VIOLATED MINERAL RULES,
Drum Mine, M/027/007, Millard and Juab County, Utah

Dear Mr. Braxton:

On behalf of Jumbo Mining Company ("Jumbo"), this shall serve to notify you of Jumbo's disagreement with and objection to the determinations and underlying "findings and analysis" made by the State of Utah, Department of Natural Resources Division of Oil, Gas and Mining ("the Division") which are the subjects of your certified letter P 074 977 198 to Jumbo's President, Edwin B. King, dated September 12 and received by Mr. King on September 14, 1997 ("the Notice"). More particularly, but without limitation; Jumbo takes issue with: (a) the Division's twenty-one page "FINDINGS AND ANALYSIS DRUM MINE M/027/007 September 11, 1997"; (b) the Division's finding "that the amount of posted reclamation surety is inadequate to satisfy R647-4-113 and the reclamation plan [for the Drum Mine] needs to be updated pursuant to R647-4-102"; and (c) the Division's requirements "in accordance with [the foregoing] finding [sic]."

This shall also serve to request an informal hearing before the Division's Director pursuant to R647-5-10.2.11.116, and sections 63-46b-4 and 63-46b-5 of the Utah Code Annotated (1953, as amended) and other applicable provisions of the laws and regulations governing the actions of the Division.

In addition to such issues as the Division's constitutionally impermissible violation of principles of fundamental fairness and its arbitrary and capricious action, Jumbo's disagreement with and objection to the findings and determinations set forth in the Notice are based, among numerous reasons, upon the following:

1. It is Jumbo's understanding that the reclamation costs were calculated by an engineer who had never seen the property before

making the calculations, and thus could not have been properly apprised of the local conditions.

2. The calculations were based on average costs for other reclamation sites around the country, and not on the Caterpillar Performance Handbook costs which are the generally accepted bases for calculating reclamation costs.

3. Costs have been included for detoxification of heaps, despite the fact that Jumbo has submitted the best available and unchallenged evidence extending over five years that these heaps were in fact detoxified before they were shut down. No contrary evidence has ever been submitted.

4. The disturbed area of the Drum Mine has not increased since 1987 aerial mapping by an independent service and 1989 calculations by the Division were concluded. No new reclaimable disturbances have been created since then at the Drum Mine.

5. The volume of the ore and waste has not changed since 1989 except that which was added on top of Heap HG 2, a detoxified heap which still has the same area as it did in 1989.

6. There is no need to flush the heaps to further detoxify them, as has been amply demonstrated over the last five years by hundreds of analyses of the drainage from all heaps after heavy rainstorms.

7. Subsequent to the shut down of leaching at the Drum Mine, the Division of Water Quality ("DWQ") never ordered the heaps to be flushed. All flushing which did occur was done in accordance with DWQ permit conditions prior to shut down, and, as indicated above, the effectiveness of such flushing has been amply demonstrated by hundreds of analyses of rainstorm drainage.

8. There is no requirement in any prior permit to cap or relocate the heaps, and there is nothing in the record which would indicate that this is required to meet permit requirements.

9. The reclamation plan accepted by the Division in 1989 is clear and concise, and is still applicable, considering that there have been no new disturbances or significant changes in conditions in the area.

In consideration of all of the above, Jumbo believes that the reclamation bond that was established for the Drum Mine by the Division in 1989, accepted by both Jumbo and Western States Minerals Corporation ("Western"), and approved by the State of

Lowell P. Braxton, Acting Director
Division of Oil, Gas & Mining
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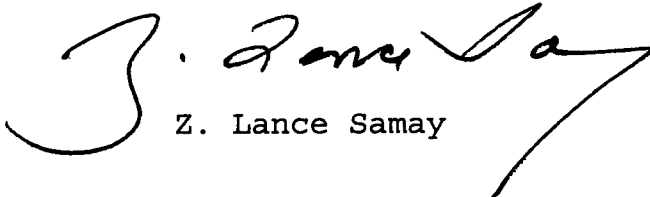
Utah, Department of Natural Resources Board of Oil, Gas and Mining is still applicable, subject only to the inclusion of "reasonable" costs for the two items, addressed below, that were not included in the 1989 estimate of reclamation costs, namely, the missing topsoil which Western failed to set aside as provided by its permit, and the contamination of a perched zone of saturation.

With regard to top soil, since 1989 Jumbo has located and proved to the Division the adequacy of sufficient topsoil to meet the Division's estimated requirements of 55,000 cubic yards. This topsoil is available within the area previously included for reclamation, so that no new reclamation costs would be involved, other than the cost of less than \$25,000 to mine and spread this topsoil. The record should show that this additional reclamation cost has already been reviewed and accepted by the Division.

With regard to the contamination of the perched zone of saturation, Jumbo's extensive monitoring of the affected area since 1989 has shown that the contamination which had apparently occurred before Western had sold the Drum Mine to Jumbo, dissipated in the years following 1988, after DWQ had ordered Western to shut down certain leaking heaps which Western had constructed and operated illegally, i.e., without permits. Considering the current evidence, there is no legitimate reason to require any increase in bonding for this factor.

Inasmuch as many of the findings upon which the Division has predicated its action are vague, and, therefore, not susceptible to ready and definitive analysis, the foregoing is not intended to be a comprehensive list of all objections to the Notice. Jumbo is, however, of the belief that the foregoing should be sufficient to prompt the Division to reconsider what is a fundamentally flawed and totally unwarranted course of action.

Sincerely yours,



Z. Lance Samay

JC092097.B1B

Xc: Edwin B. King

All recipients of Notice of Agency Action dated 09/12/97

Federal Express Airbill No.: 4975479865

DEAR [REDACTED] HARA:

PLEASE ARRANGE TO FILE THIS ORIGINAL
CERTIFICATE OF SERVICE. IT WAS NOT INCLUDED
WITH THE ORIGINAL LETTER TO MR. BRAXTON.

I THANK YOU.

below,

object

RULES,

Notice

decision

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s letter

D MINERAL

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from the

, first-

class U.S. Mail upon all recipients of the Notice, including,
without limitation, the following:

ALLEN R. CERNY
Land and Legal Manager for
Western States Minerals Corporation
4975 Van Gordon Street
Wheat Ridge, CO 80033

STEVEN ALFERS, ESQ.
CHRISTOPHER G. HAYES, ESQ.
Alfers & Carver, LLC
Attorney for
Western States Minerals Corporation
Equitable Building
730 17th Street, Suite 340
Denver, CO 80202

H. MICHAEL KELLER, ESQ.
Van Cott, Bagley, Cornwall & McCarthy
Attorney for
Western States Minerals Corporation
50 South Main Street, Suite 1600
Salt Lake City, UT 84144

THOMAS A. MITCHELL, ESQ.
Assistant Attorney General
Attorney for
The Division of Oil, Gas & Mining
160 East 300 South, Sixth Floor
Post Office Box 140857
Salt Lake City, UT 84114-0857

DAVID RUPP
Division of Water Quality
Department of Environmental Quality
288 North 1460 West
Salt Lake City, UT 84116

M 1007/1007

*Vickie - This is an
old document of that
V. Bailey found while
going through Roger's
stuff she discarded.
Could you see if you
can locate the letter @
9-20-97 that this
should go with.
Thanks Vickie*

RONALD TESENEER

SHERRI WYSONG

Fillmore District Office
Bureau of Land Management
35 East 500 North
Fillmore, UT 84631

PATRICK J. O'HARA, ESQ.

Assistant Attorney General
Attorney for
The Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Post Office Box 140855
Salt Lake City, UT 84114-0855

DANIEL G. MOQUIN, ESQ.

Assistant Attorney General
Attorney for
The Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Post Office Box 140855
Salt Lake City, UT 84114-0855

DATED: SEPTEMBER 20, 1997
MORRISTOWN, NEW JERSEY


Z. LANCE SAMAY, ESQ.

JC092097.A1B